

AA 565-00
VAR

Belcher, Lester
0380

MSA-5-1829-846

Letter
11/13/00

Judge John C. North, II
Chairman



Ren Serey
Executive Director

**STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION**

1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338

November 13, 2000

Mr. Kevin Dooley
Anne Arundel County Department of Planning and Code Enforcement
2664 Riva Road, MS 6301
Annapolis, MD 21401

RE: Variance 2000-0380-V, Lester & Deborah Belcher

Dear Mr. Dooley:

Thank you for providing information on the above referenced variance application. The applicant is requesting variances to permit a dwelling and associated utilities with less setbacks and Buffer than required. The property is designated LDA and is currently undeveloped.

Provided this lot is properly grandfathered, this office does not oppose the siting of a single family dwelling on it. Due to the location of wetlands on the property, it does not appear that the lot could be developed without a variance. The proposed house has a modest footprint. We do not oppose the variance requested provided that mitigation is provided at a 3:1 ratio for clearing over 30% of the lot. Also, we recommend that the County require the developer to alert the future property owner to the restrictions on this lot (i.e., that there is a prohibition on further clearing of the lot, etc.).

Thank you for the opportunity to provide comments. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case.

Sincerely,

A handwritten signature in cursive script that reads "LeeAnne Chandler".

LeeAnne Chandler
Natural Resources Planner

cc: AA565-00

Branch Office: 31 Creamery Lane, Easton, MD 21601
(410) 822-9047 Fax: (410) 820-5093

TTY FOR DEAF ANNAPOLIS-974-2609 D.C. METRO-586-0450

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JAN 17 2001

CHESAPEAKE BAY
CRITICAL AREA COMMISSION

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2000-0380-V

IN RE: LESTER BELCHER, III AND DEBORAH BELCHER

FIRST ASSESSMENT DISTRICT

DATE HEARD: DECEMBER 14, 2000

ORDERED BY: STEPHEN M. LeGENDRE, ADMINISTRATIVE HEARING OFFICER

ZONING ANALYST: SUZANNE DIFFENDERFER

DATE FILED: JANUARY 12, 2001

PLEADINGS

Lester Belcher, III and Deborah Belcher, the applicants, seek a variance (2000-0380-V) to permit a dwelling and associated facilities with less buffer than required on property located along the north side of Loch Haven Drive, west of Walnut Drive, Edgewater.

PUBLIC NOTIFICATION

The case was advertised in accordance with the County Code. The file contains the certification of mailing to community associations and interested persons. Each person designated in the application as owning land that is located within 175' of the property was notified by mail, sent to the address furnished with the application. Mr. Belcher testified that the property was posted for more than 14 days prior to the hearing. I find and conclude that the requirements of public notice have been satisfied.

FINDINGS AND CONCLUSIONS

The applicants own unimproved property with a street address of 3538 Loch Haven Drive, in the subdivision of Loch Haven Beach, Edgewater. The property comprises 7,500 square feet and is zoned R-5 residential with a Chesapeake Bay Critical Area designation as Limited Development Area (LDA). The applicants seek to develop the site with a single-family dwelling, driveway, well and sewage disposal system. The development will disturb nontidal wetlands and the buffer to

nontidal wetlands.

The Anne Arundel County Code, Article 28, Section 1A-104(a)(1) establishes a minimum 25-foot buffer surrounding nontidal wetlands. Accordingly, the proposal necessitates a variance to permit development within a nontidal wetland and its buffer.

Suzanne Diffenderfer, a zoning analyst with the Office of Planning and Zoning, testified that the property is a grandfathered lot which is below the minimum width for the R-5 district. As noted, the lot contains nontidal wetlands; the buffer extends to the remaining lot area. The witness testified that the direct nontidal wetland impact has been minimized; but absent a variance to the buffer, the property cannot be developed. Ms. Diffenderfer submitted the written comments of the Chesapeake Bay Critical Area Commission dated November 13, 2000 (Attachment 1). By way of conclusion, she supported the application.

Ed Brown, the applicants' engineering consultant, submitted into the record a copy of a letter dated September 25, 2000 from the Maryland Department of the Environment (Attachment 2). The witness testified that the nontidal wetlands and buffer cover 90 percent of the lot. He contended that the requested relief has been minimized and that the granting of the variance will not adversely impact Critical Area resources, nor alter the character of the neighborhood. The witness acknowledged that the property acts as a sump and indicated that drainage will

need to be addressed during building permit review.¹

Mr. Belcher testified that the proposed dwelling is consistent with other homes in the community.

There was substantial public opposition to the application. Kevin Hendricks, who resides at 3536 Loch Haven Drive, testified that the property is regularly six to twelve inches under water and floods to a depth of two to three feet during storm events. He also observed that the County has deepened the roadside drainage ditches to as much as five feet but they continue to overflow.

Ruth Packett, who resides at 3542 Loch Haven Drive, submitted several photographs depicting severe flooding along the block. Finally, Phillip Bissett, who resides at 453 Walnut Drive, testified that he has discussed the drainage conditions with County officials. Because the property serves as the outfall for the block, the witnesses contended that the granting of the variance will adversely impact the adjacent properties. They also expressed concern about the impact of the project to the wetlands.

I visited the site and the neighborhood more than two weeks after a severe storm event. Although the ditches along the street were essentially dry, a drainage course through the property was plainly evident. The condition will make development of the lot a distinct challenge.

The standards for granting variances are continued in Section 11-102.1.

¹According to the witness, the preliminary comments from the County have not addressed the issue of drainage.

Under subsection (b), for a property in the Critical Area, a variance to the Critical Area program requirements may be granted only after determining that (1) due to unique physical conditions, peculiar to the lot, a strict implementation of the program would result in an unwarranted hardship to the applicants; (2) a literal interpretation of the program will deprive the applicants of rights commonly enjoyed by other properties in similar areas within the Critical Area; (3) the granting of the variance will not confer on the applicants any special privilege that would be denied by the program to other lands within the Critical Area; (4) the variance request is not based on circumstances resultant of actions by the applicants and does not arise from conditions relating to land use on neighboring property; and (5) the granting of the variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the Critical Area and will be in harmony with the general spirit and intent of the program. Under subsection (c), any variance must be the minimum necessary to afford relief; and its grant may not alter the essential character of the neighborhood, substantially impair the appropriate use or development of adjacent property, or be detrimental to the public welfare.

In Anne Arundel County, Critical Area variances are measured against the unwarranted hardship standard. The issue is whether the denial of the application is a denial of "reasonable and significant use." Belvoir Farms Homeowners Association, Inc., v. North, 355 Md. 259 (1999). The factors enumerated in the variance statute "cannot be construed individually to overrule a finding of unwarranted hardship... ."

White v. North, 356 Md. 31 (1999).

Upon review of the facts and circumstances, I find and conclude that the applicants are entitled to conditional relief from the code. For this Critical Area property, due to the extent of the nontidal wetlands and its buffer, which occupy most of the site, a strict implementation of the Critical Area program would result in an unwarranted hardship to the applicants. A literal interpretation of the program will deprive them of the right to develop a legally buildable lot with a single family dwelling; a right commonly enjoyed by other properties in Loch Haven Beach as well as in other areas of the Critical Area. Conversely, the granting of the variance will not confer on the applicants any special privilege that the program denies to other lands within the Critical Area. There was absolutely nothing to suggest that the request results from the actions of the applicants; nor does it arise from land use on neighboring property. Finally, the granting of the variance with mitigation will not adversely impact Critical Area resources and will harmonize with the general spirit and intent of the program.

I further find that the variance represents the minimum relief. The record demonstrates that the applicants are proposing a modest dwelling. They have minimized the impacts in the wetlands. There is no real opportunity to avoid the buffer to wetlands.

The granting of a variance to permit a single family residence will not alter the residential character of the neighborhood.

There is little doubt that the property and the surrounding area experience

severe flooding during storm events. Given that the site functions as the outfall for the block, the residents are understandably concerned that the project will increase the frequency and severity of the flooding. While the matter is certainly not free from doubt, I do not believe that the flooding concerns are justification to deny the variance. The situation evolved from the pattern of development. Its resolution will entail a County storm drain study and capital improvement project. The obligation of the applicants is to manage their stormwater and grade their site to the satisfaction of the Permit Application Center. Provided they comply, I do not believe that the incremental impact from the granting of the variance will *substantially* impair the appropriate use or development of adjacent property, or be detrimental to the public welfare. The approval shall be subject to the conditions in the Order.

ORDER

PURSUANT to the application of Lester and Deborah Belcher, petitioning for a variance to permit a dwelling and associated facilities with less buffer than required; and

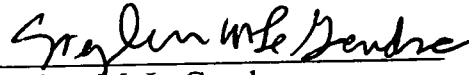
PURSUANT to the advertising, posting of the property, and public hearing and in accordance with the provisions of law, it is this 12 day of January, 2001,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicants are hereby **granted** a variance to permit a single-family

dwelling and associated facilities in nontidal wetlands and buffer in accordance with the site plan.

The foregoing variance is subject to the following conditions:

1. The applicants shall obtain authorization from the Maryland Department of the Environment.
2. The applicants shall provide mitigation at a 3:1 ratio for clearing over 30 percent of the lot.
3. The balance of the site shall be subject to a Forest Conservation Easement satisfactory to the Permit Application Center.
4. The applicants shall satisfy the requirements of the Permit Application Center with respect to stormwater management and grading.


Stephen M. LeGendre
Administrative Hearing Officer

NOTICE TO APPLICANT

Within thirty (30) days from the date of this Decision, any person, firm, corporation, or governmental agency having an interest therein and aggrieved thereby may file a Notice of Appeal with the County Board of Appeals.

Further, Section 11-102.2 of the Anne Arundel County Code states:

A variance granted under the provisions of this Article shall become void unless a building permit conforming to the plans for which the variance was granted is obtained within one year of the grant and construction is completed within two years of the grant.

If this case is not appealed, exhibits must be claimed within 60 days of the date of this order, otherwise they will be discarded.



Judge John C. North, II
Chairman

Ren Serey
Executive Director

**STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION**

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Sincerely,

LeeAnne Chandler
Natural Resources Planner

cc: AA565-00

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PLANNING & CODE ENFORCEMENT



MARYLAND DEPARTMENT OF THE ENVIRONMENT

2500 Broening Highway • Baltimore, Maryland 21224

(410) 631-3000 • 1-800-633-6101 • [http:// www. mde. state. md. us](http://www.mde.state.md.us)

Parris N. Glendening
Governor

Jane T. Nishida
Secretary

September 25, 2000

Ms. Nancy Matthews
Cattail Consulting
PO Box 1599
Severna Park, MD 21146

Tracking #: 00-NT-0366/200066430
Project: Lot # 3 Loch Haven, AA County
Contact Person: Judy Cole
Phone: 410-414-3400
e-mail: jcole@toad.net

Dear Ms. Matthews:

The Nontidal Wetlands and Waterways Division of the Water Management Administration in the Maryland Department of the Environment has reviewed your application for an activity in a nontidal wetland or buffer, 100-year floodplain, and/or regulated waterway. We have determined that the project, as proposed, appears eligible for an LOA and the MDSPGF under the Category I review process.

Prior to issuance of the authorization, please provide mitigation for permanent losses to the wetlands per CBCA mitigation requirements. Please direct questions regarding mitigation to Mr. Dave Walbeck in our Baltimore office at 410-631-8094. Be sure to reference all tracking numbers on your resubmittal.

The Water Management Administration has established a Permits Service Center to track both State and federal applications for activities in wetlands and waterways. Should you have any questions regarding the status of your application, you may call our Permits Service Center at 1-800-876-0200 (toll free) between the hours of 8:30 am and 4:30 pm Monday through Friday. Please have your application tracking number available when you call.

Sincerely,

Judy Broersma-Cole
Project Manager
Nontidal Wetlands and Waterways Division

cc: AA County PAC - Bill Love